

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

American Savings of Florida,)
F.S.B.,)
Miami, Florida)

Re: No. ATL-94-10

Date: June 29, 1994

ORDER TO CEASE AND DESIST

WHEREAS, American Savings of Florida, F.S.B., Miami, Florida ("American" or the "Association") OTS No. 5405, by and through its Board of Directors ("Board"), has executed a Stipulation and Consent to the Entry of an Order to Cease and Desist ("Stipulation"), which is hereby incorporated into this Order to Cease and Desist ("Order"); and

WHEREAS the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities has determined that:

(a) On October 5, 1992, the OTS issued its Order No. AP 92-106. OTS AP 92-106 was comprised of (1) a Cease And Desist Order For Restitution And Order Of Prohibition, with accompanying Stipulation and Consent, against former American Chairman of the Board and Chief Executive Officer, Harris Friedman ("Friedman"); (2) a Cease And Desist Order For Restitution And Order Of Prohibition, with accompanying Stipulation and Consent, against former American Director Richard J. Grassgreen ("Grassgreen"); and (3) an Order To Cease And Desist For Affirmative Relief, with accompanying Stipulation and Consent, against former counsel to American, Alan J. Berkeley ("Berkeley") and Kirkpatrick & Lockhart ("K&L").

(b) Paragraph 8 of the Stipulations and Consents against Friedman, Grassgreen, and Berkeley and K&L provided that ninety percent (90%) of the restitution paid by them was allocated to the resolution of potential OTS claims and ten percent (10%) of the restitution paid was allocated to the resolution of American's lawsuit, American Savings of Florida, F.S.B. v. Kirkpatrick & Lockhart, et al., Case No. 91-50064 CA 28 (Circuit Court, Dade County) (hereinafter "the American/K&L lawsuit").

(c) The allocation of restitution amounts paid by Friedman, Grassgreen and Berkeley and K&L, between resolution of the OTS claims and the American/K&L lawsuit as described in Paragraph (b) above, was arrived at by the parties by agreement, as part of the settlement process, taking into consideration the relative litigation risk between the federal administrative action and the state court litigation, as well as other pertinent factors.

(d) On or about October 6, 1992, copies of the documents comprising OTS AP 92-106 were served on American by OTS.

(e) On October 2, 1992, Edward A. Moss ("Moss") and his law firm, Anderson, Moss, Parks & Sherouse, filed a charging lien in state court in Dade County, Florida, against American in connection with the American/K&L lawsuit. The charging lien asserts that Moss is entitled to fees from American totaling approximately \$3.7 million, or 33 percent of the total funds recovered by the OTS in its negotiated settlements with Friedman, Grassgreen, Berkeley and K&L, plus asserted interest thereon, rather than the \$377,333.33, or 10%, determined by the OTS to be attributable to the American/K&L lawsuit.

(f) On October 21, 1992, OTS Southeast Regional Director John E. Ryan issued a Supervisory Directive ("Directive") to American's Board of Directors. Moss was subsequently made aware of the Directive. The Directive, which is hereby incorporated in its entirety into this Order and is attached hereto as Exhibit A, specifically details the OTS's analysis of the facts relating to the Moss charging lien. The Directive concludes that American's payment of the Moss claim would be an unsafe and unsound practice and specifically directs the Board to pay Moss no more than one third of the ten percent (10%) of the total funds recovered by the OTS that is attributable to the American/K&L lawsuit.

(g) At the time the Directive was issued OTS had significant supervisory concerns regarding the sufficiency of American's capital to support, among other things, the level of interest rate and credit risk at the Association. The OTS also was concerned that because American would be required by the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (August 9, 1989) to phase out its use of "supervisory goodwill" as an asset, this requirement of law would further deplete American's capital. In addition, the Association was experiencing weak core operating earnings.

(h) The trial of the Moss charging lien matter began in the Circuit Court of the Eleventh Judicial Circuit for Dade County, Florida on June 20, 1994.

(i) At some time following the commencement of the Moss charging lien trial American may be ordered or directed to pay to Moss fees exceeding the limitations established by the OTS in its Directive.

(j) While asset quality has improved, based upon the most recent OTS examination of American (March 1993) the OTS continues to have concerns regarding the adverse impact that a payment in contravention of the Supervisory Directive will have on American's capital position. Further, all remaining supervisory goodwill must be phased out by January 1, 1995, and this will have an adverse impact on American's capital. American is currently undergoing a comprehensive OTS examination.

(k) For the reasons set forth in the Directive, as well as the reasons outlined above, the OTS has determined that the payment of fees to Moss in connection with the American/K&L lawsuit may not exceed \$373,333.33, less any amounts credited for prior payments to Moss of \$5,000 per month. It continues to be the OTS position that the payment of fees in excess of this amount would be an unsafe and unsound practice; and

WHEREAS, American, in the Stipulation, has consented and agreed to the issuance of this Order, pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)¹; and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where American has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED THAT American and its directors, officers, employees, agents, and service corporations and subsidiaries shall at all times comply with the provisions outlined below.

1. All references to U.S.C. are as amended.

Payment of Legal Fees.

1. In connection with the lawsuit styled American Savings of Florida, F.S.B. v. Kirkpatrick & Lockhart, et al., Case No. 91-50064 CA 28 (Circuit Court, Dade County), American shall not, without the prior written approval of the Regional Director, for any reason, directly or indirectly, make any payment in excess of \$373,333.33 (less any amounts credited for previous payments of \$5,000 per month) to Mr. Edward A. Moss, the law firm of Anderson, Moss, Parks & Sherouse, Mr. Mark Hicks, the law firm of Hicks, Anderson and Blum, or any representative of such entities including, but not limited to, any payment of legal fees, any payment in satisfaction or settlement in whole or in part of the charging lien filed in the above-referenced action, and/or any payment in satisfaction in whole or in part of any judgment that may be entered in such action.

2. The Board and officers of the Association shall take immediate action as necessary to cause the Association to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Association to continue to carry out the provisions of this Order.

3. Unless and until American is otherwise notified in writing by the OTS, the restrictions contained in 12 C.F.R. § 574.9, OTS Regulatory Bulletin 3a-1 and OTS Technical Bulletin 45, as generally applied to institutions that are the subject of a cease and desist order, shall not apply to American. Further, the existence of this Order shall not adversely affect the processing of any applications or notices required or permitted to be filed by American with the OTS, including, but not limited to, the processing procedures set forth at 12 C.F.R. Part 516.

Definitions.

All technical words or terms used in this Order for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, HOLA, FDIA or OTS Memoranda. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

Successor Statutes, Regulations, Guidance, Amendments.

Reference in this Order to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

Notices.

A. Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:

(1) the OTS by the Association, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Director, Office of Thrift Supervision, Department of the Treasury, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309 or telecopied to (404) 897-1861 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

(2) the Association by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to Mr. Steve Taylor at the Association at 17801 North West 2nd Avenue, Executive Offices, Miami, Florida 33169 or telecopied to Mr. Taylor at (305) 770-2155 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.

B. Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received two Business Days after the date of the postmark on the envelope in which the notice was enclosed.

Duration, Termination or Suspension of Order.

A. This Order shall: (i) become effective upon its execution by the OTS, through its authorized representative whose signature appears below and (ii) remain in effect until terminated, modified or suspended in writing by the OTS, acting

through its Director or the Regional Director (including any authorized designee thereof).

B. The Regional Director in his or her sole discretion, may, by written notice, suspend any or all provisions of this Order.

Effect of Headings.

The Section headings herein are for convenience only and shall not affect the construction hereof.

Separability Clause.


In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

Successors in Interest/Benefit.

The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto, the Resolution Trust Corporation, and the Federal Deposit Insurance Corporation and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Order.

THE OFFICE OF THRIFT SUPERVISION

By:


Richard M. Riccobono
Acting Regional Director
Southeast Region

Date: June 29, 1994

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of
American Savings of Florida,
F.S.B.,
Miami, Florida

Re: No. ATL-94- 10

Date: June 29, 1994

STIPULATION AND CONSENT TO THE ENTRY OF
AN ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against American Savings of Florida, F.S.B, Miami, Florida, OTS No. 5405 ("American" or "the Association") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b)¹; and

WHEREAS, American desires to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, except the jurisdiction of the OTS, as set forth in paragraph 1 below, which is admitted, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) American is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) Pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), the appropriate Federal banking agency may issue a ~~cease and desist order~~ against any insured depository institution that the agency has reasonable cause to believe has engaged in or is about to engage in unsafe or unsound practices in conducting its business and/or violate a rule or

1. All references to the U.S.C. are as amended.

regulation.

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. §1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association. The Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue cease and desist orders where the respondent has consented to the issuance of the order. Therefore, American is subject to the jurisdiction of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

2. Consent. American consents to the issuance by the OTS of the accompanying Order. American further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

3. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Southeast Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. Waivers.

(a) American waives its right to a notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.

(b) American acknowledges and agrees that the consent to the entry of the Order is for the purposes of resolving this OTS enforcement matter only, the payment of fees to Moss in connection with the American/K&L lawsuit, and does not resolve, affect or preclude any other civil or criminal proceeding which may be or has been brought by the OTS or another governmental entity.

5. Signature of Directors. Each Director signing this Stipulation attests that s/he voted in favor of a resolution authorizing the execution of the Stipulation.

WHEREFORE, American, by a majority of its directors, executes this Stipulation and Consent to the Entry of an Order to Cease and Desist, intending to be legally bound hereby.

American Savings of Florida, FSB
Miami, Florida
by a majority of its directors

Accepted by:

Office of Thrift Supervision

By:

Director

Barbara H. Gothard
Director

James Allen
Director

Director

Wm. K. McF.

Director

William A. Schuler
Director

Deirdre Russell
Director

Director

Director

Richard M. Riccobono
ACTING REGIONAL DIRECTOR
Southeast Region

Date: June 29, 1994

Date: **June 28, 1994**